

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)
)
Horry Telephone Cooperative, Inc. d/b/a Horry) CSR 5870-E
Telephone Cablevision)
)
Petition for Determination of Effective Competition)
)

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 2002

Released: September 20, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Horry Telephone Cooperative, Inc. d/b/a Horry Telephone Cablevision ("Horry") has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and Sections 76.7(a)(1) and 76.905(b)(1) of the Commission's rules for a determination of effective competition in its Horry County, South Carolina franchise area (the "county"). Horry alleges that its cable system serving the county is subject to effective competition and therefore exempt from cable rate regulation. Horry claims the presence of effective competition because of the competing services offered by Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable ("Time Warner"), a competing cable provider in Horry's franchise area. No opposition to the petition was filed.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,¹ as that term is defined by Section 76.905 of the Commission's rules.² The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area. Based on the record in this proceeding, Horry has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.³

¹ 47 C.F.R. § 76.906.

² 47 C.F.R. § 76.905.

³ 47 U.S.C. §543(1)(1)(B); *see also* 47 C.F.R. §76.905(b)(2).

4. Turning to the first prong of the competing provider test, Horry has presented evidence that Time Warner, a competitive wireline MVPD also serves the franchise area. Horry demonstrates that 64 percent of the households in the franchise area are passed by both Horry and Time Warner's systems.⁴ With respect to the issue of program comparability, we find that the programming of Horry and Time Warner satisfies the Commission's program comparability criterion because they each offer at least 12 channels of video programming, including at least one non-broadcast channel.⁵ We find that Horry has demonstrated that the county is served by at least two unaffiliated MVPDs, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Time Warner is the largest MVPD in the county with 24,200 subscribers.⁶ Horry provided 2000 Census household data that indicates that there are 55,782 households in the county.⁷ Horry also provides evidence that, as the smaller of the two MVPDs, it has 23,265 subscribers of the 55,782 county households resulting in a penetration rate of 41 percent.⁸ We find that Horry has demonstrated that the number of households subscribing to programming services offered by a MVPD other than the largest MVPD, exceeds 15 percent of the households in the county. Based on the record, Horry has demonstrated that its cable system serving Horry County, South Carolina is subject to effective competition.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Horry Telephone Cooperative, Inc. d/b/a Horry Telephone Cablevision **IS GRANTED**.

7. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

⁴ Petition at 3 (35,904 households served by both operators ÷ 55,782 county households = 64%). Although not relied upon by Horry in its Petition, we note that the service of both DirecTV, Inc. and Dish Network are presumed to be technically available to more than 50 percent of subscribers due to their nationwide satellite footprint. *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁵ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 3 and Exhibit 1.

⁶ Petition at 3-4 and Exhibit 3.

⁷ *Id.*

⁸ *Id.*

⁹ 47 C.F.R. § 0.283.